

**United States District Court
FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

VENUE: SAN JOSE

UNITED STATES OF AMERICA,

V.

SEP - 8 2000

o 2009

CR 09 0895

JW

DAVID ARTHUR NILSEN, and
MANOEL ANTONIO ERRICO,

DEFENDANT(S).

PVT

INDICTMENT

Count One: 18 U.S.C. § 1349 (Conspiracy);
Counts Two - Twelve: 18 U.S.C. § 1341 (Mail Fraud);
Counts Thirteen - Twenty: 18 U.S.C. § 1343 (Wire Fraud);
Counts Twenty-One - Thirty-One: 15 U.S.C. §§ 78j(b) and 78ff, 17
C.F.R. §§ 240.10b-5 and 240.10b5-2 (Securities Fraud),
18 U.S.C. § 2 (Aiding and Abetting)

A true bill.

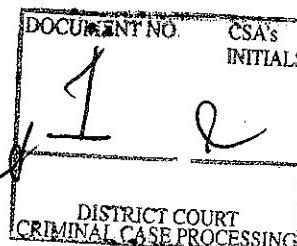
Foreman

Filed in open court this 8th day of

September 2009
Kathleen Horn

~~JOSEPH C. SPERO KAREN L. HOWLER~~
UNITED STATES MAGISTRATE JUDGE

Dasil



1 JOSEPH P. RUSSONIELLO (CABN 44332)
2 United States Attorney
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SEALED
BY COURT ORDER

FILED
SEP - 8 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID ARTHUR NILSEN,
MANOEL ANTONIO ERRICO,

Defendants.

No.
CK09
MOTIONS:

- 0895

18 U.S.C. § 1349 (Conspiracy);
18 U.S.C. § 1341 (Mail Fraud);
18 U.S.C. § 1343 (Wire Fraud);
15 U.S.C. §§ 78j(b) and 78ff,
17 C.F.R. §§ 240.10b-5 and 240.10b5-2,
18 U.S.C. § 2 (Securities Fraud); and
18 U.S.C. § 981(a)(1)(C),
28 U.S.C. § 2461(c) (Forfeiture)

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges that, at all relevant times:

Relevant Entities and Individuals

1. DAVID ARTHUR NILSEN (“NILSEN”) was a resident of Monterey, California, and worked as a licensed real estate broker in the real estate development and investment profession.
2. CEDAR FUNDING, INC. (“CFI”) was a California corporation located in

INDICTMENT

1 Monterey and owned and controlled by NILSEN, who was its president. Prior to incorporating
2 CFI, NILSEN operated as a sole proprietorship known as David Nilsen, dba Cedar Funding.
3 This Indictment refers to both entities as "CFI." CFI was a "hard money lender" which purported
4 to engage in the business of originating and servicing loans made by private investors to
5 borrowers, primarily for residential construction and development projects.

6 3. CEDAR FUNDING MORTGAGE FUND, LLC (the "Fund" or "CFMF") was a
7 California limited liability company whose sole manager was CFI. NILSEN organized the Fund
8 for the stated purpose of offering securities (known as "units") to investors and using the
9 proceeds from the offering to invest in secured loans originated and serviced by CFI.

10 4. MANOEL ANTONIO ERRICO ("ERRICO") was a resident of Monterey,
11 California, and was the Loan Servicing Manager for CFI. ERRICO created, maintained and was
12 responsible for the loan and investment records of CFI and CFMF, and directed major loan
13 servicing functions such as tracking loan balances, recording and processing receipts and
14 disbursements into and out of bank accounts, and generating account statements, payments and
15 other records sent by mail, wire and electronic transfer to CFI and CFMF investors.

16 5. ACCUSTOM DEVELOPMENT, LLC ("ACCUSTOM") was a California limited
17 liability company controlled by NILSEN. ACCUSTOM purportedly engaged in residential
18 construction and development, using funds borrowed from CFI and CFMF investors.

19 6. NILSEN and ERRICO owed fiduciary, agency and other legal, statutory and
20 contractual duties of trust, loyalty, confidence and full disclosure to CFI and CFMF investors.

21

22 The Business of CFI

23 7. NILSEN and ERRICO took investors' money with the promise of investing it in
24 individual, or "fractional," interests in loans. The typical loan was interest-only, for a 12 month
25 period, and was supposed to be funded by a maximum of 10 investors. The borrowers were
26 mostly developers who sought loans for real estate projects including building custom homes.
27 During the loan period, the investors received interest payments of 12% or 13%, depending upon

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INDICTMENT

1 the priority level of the loan (a loan in second priority paid a higher rate); if the loan paid off, the
2 investors' principal was returned or, at their option, rolled into a new CFI loan.

3 8. NILSEN and ERRICO generated a standard set of investment documents that they
4 mailed to investors at the inception of their investment. Among these documents were: (a) a
5 promissory note between a borrower and CFI (which was identified as the "lender"); (b) a
6 security instrument known as a deed of trust, entered into between the borrower, CFI (as "lender"
7 and "beneficiary") and a third-party trustee, in which the borrower transferred his property, in
8 trust, to the trustee, for the benefit of CFI during the loan period; among other things, the deed of
9 trust gave the lender-beneficiary the authority to foreclose on, and sell, the property if the
10 borrower failed to perform; (c) a "Promissory Note Endorsement," in which CFI purported to
11 transfer to the investor, to the extent of the investor's percentage interest in the loan, all of CFI's
12 rights as the lender in the promissory note; (d) an "Assignment of Deed of Trust," in which CFI
13 purported to transfer to the investor, to the extent of the investor's percentage interest in the loan,
14 all of CFI's rights as the lender-beneficiary in the deed of trust; and (e) a "Lender / Purchaser
15 Disclosure Statement," which made representations about the loan, such as the loan amount, the
16 amount of senior encumbrances, the value of the property relative to the amount of loans secured
17 by it, and the borrower's sources of income and expenses. This indictment refers to these
18 documents collectively as the "Fractional Investment Documents."

19 9. After they purportedly transferred to investors all of CFI's rights and interests as
20 lender and beneficiary in the promissory note and deed of trust, NILSEN and ERRICO
21 represented to investors that CFI would act as their loan servicing agent. CFI's loan servicing
22 duties were set forth in the "Loan Servicing Agreement." In this agreement, NILSEN and
23 ERRICO promised to investors, among other things, that CFI would "consult with and follow
24 instructions from [the investors] on non-routine collection matters," "grant [to the borrower]
25 appropriate payment deferrals, but not the maturity of the Loan unless approved by the
26 [investors]," and "promptly communicate to [the investors] any material information about
27 collection of the Loan and the source of non-borrower Loan payments."

28 **INDICTMENT**

1 10. Typically, NILSEN and ERRICO caused the original deed of trust between the
 2 borrower and CFI to be recorded at the recorder's office of the county in which the property was
 3 located, thereby giving public notice of the existence of the CFI loan. While the Lender /
 4 Purchaser Disclosure Statement and Loan Servicing Agreement represented to investors that CFI
 5 would record the assignments of the deeds of trust that it had issued to investors, NILSEN and
 6 ERRICO typically did not record the assignments, which left CFI as the lender of record despite
 7 the purported transfer of all of its interest in the loans to investors.

8 11. In the event of borrower default and foreclosure, the loan with the highest priority,
 9 known as a "1st Deed of Trust" (which paid 12%) was most secure because its lenders were first
 10 in line to be paid. Investors in a 2nd Deed of Trust (which paid 13%) would be paid from
 11 remaining proceeds, if any.

12 12. NILSEN and ERRICO mailed and electronically transmitted to investors monthly
 13 interest payments and account statements reflecting the amounts paid and principal balances.
 14 Included in this mailing was a marketing insert on which CFI listed information about loans
 15 presently available for investment.

16 13. In advertisements, marketing materials and through oral statements, NILSEN,
 17 ERRICO and other CFI personnel represented to investors that CFI's loans were safe and secure
 18 investments, as reflected in the following statements, among others: (a) CFI specialized in
 19 "secured aggressive growth investing," and investments were "secured by either a 1st or 2nd Deed
 20 of Trust, just like a bank"; (b) an investment in a CFI loan was usually for 12 to 24 months; (c)
 21 CFI rarely foreclosed on properties that were the security for investors' loans, because it carefully
 22 screened its borrowers and arranged transactions to provide investors with "maximum available
 23 protection"; and (d) no investor ever lost his or her principal with CFI.

24

25 The Business of CFMF

26 14. In or about 2004, NILSEN began operating CFMF, a "blind pool" of investor
 27 funds which invested alongside CFI's fractional investors in construction and development loans.

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INDICTMENT

1 CFMF issued securities, known as "units," to its investors, based upon the amount of money they
2 invested in the Fund. CFMF mailed or electronically transmitted to investors' accounts a fixed
3 interest payment, usually 10.75%, and account statements reflecting the payments and account
4 balances. CFI was the Fund's "Manager," and NILSEN, as CFI's president and sole shareholder,
5 made the Fund's investment decisions. ERRICO, among other Fund-related duties, created and
6 maintained records of the amount of investor funds contributed to CFMF, the amount of CFMF's
7 investments in loans and the balances of the loans in its portfolio, and prepared and sent interest
8 payment checks (signed by NILSEN) to Fund investors.

9 15. NILSEN distributed to Fund investors an Offering Circular which contained
10 representations about the nature of the Fund's investments, including: (a) the Fund was formed
11 for the purpose of making or investing in loans secured by deeds of trust on real estate; (b)
12 proceeds from the sale of units in the Fund would be used primarily to make secured loans; (c)
13 all loan documents would name the Fund as payee and beneficiary, and Fund investments would
14 not be held in the name of CFI or any other nominee; (d) the Fund would not make loans to the
15 Manager or to any of its affiliates, except for financing extended as part of a sale of real estate
16 owned as a result of foreclosure; (e) CFI would instruct borrowers to send their loan payments
17 directly to the Fund or to CFI's trust account maintained on the Fund's behalf; and (f) the
18 Manager was a fiduciary to the Fund's investors, was required to exercise good faith and integrity
19 with respect to the Fund's affairs, and was prohibited from using CFMF's funds in any manner
20 "except for the exclusive benefit" of CFMF.

21 16. In advertisements, marketing materials and through oral statements, NILSEN,
22 ERRICO and other CFI personnel represented to investors that CFMF was a safe and secure
23 investment, as reflected in the following statements, among others: (a) CFMF's investments
24 were secured by real property; (b) CFMF specialized in "high-yielding, real-estate secured
25 investments"; (c) investors could "[p]ossess [their] Golden Goose" and earn a "Fistful of
26 Dollars" by investing in CFMF; and (d) that funds invested in CFMF were the "Hardest Working
27 Capital in the County."

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INDICTMENT

The Scheme to Defraud

17. In or about 2004 through 2008, NILSEN and ERRICO engaged in a scheme, plan and artifice to defraud investors, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, through three principal methods: (A) making materially false statements, (B) omitting to disclose material facts, and (C) creating a materially deceptive and misleading scheme, plan and artifice to defraud. Investors entrusted NILSEN and ERRICO with over \$150 million, but NILSEN and ERRICO failed to invest those funds in the manner promised, and converted millions of dollars of the investors' money for their personal benefit. The investments which were part of the scheme to defraud include, but are not limited to, the following:

Property / Borrower	Loan Number
Pajaro / Accustom Development	4532
Hermitage / Accustom Development	4536, 45362
Belavida / Nilsen	4632, 46326
Pasadera / Nilsen	4649, 46496
Palo C. / Borrower A	4929, 4971
Via D.M. / Nilsen	4951
Lake E. / Borrower B	5078
Bay Ridge / Accustom Development	4921, 5352
Corning / Accustom Development	5364
93 Chaparral / Accustom Development	5365
4 th and M.V. / Borrower C	5436
Monterra / Borrower D	5578

18. NILSEN and ERRICO made false and misleading statements to investors using, among other things, the Fractional Investment Documents, the Offering Circular, interest payments and account statements, marketing inserts, advertisements and other verbal communications with investors. NILSEN and ERRICO created the false and misleading appearance that the investors' funds were invested in sound, secured real estate loans, which

INDICTMENT

1 offered high returns and safety of principal.

2 19. In truth, as NILSEN and ERRICO knew, by in or about 2004 and increasingly
3 thereafter, most of the loans were not performing, and thus the investors' funds were not secure.
4 As borrowers increasingly failed to pay off loans, NILSEN and ERRICO, without the investors'
5 prior knowledge or consent, extended the loan maturity dates and advanced more investor funds,
6 which caused the loan balances to balloon far beyond the initial loan amounts, diluted the
7 investors' fractional interests in the loans, and increased the likelihood that they would lose some
8 or all of their principal.

9 20. The ever-increasing loan balances required ever-increasing amounts of interest
10 payments to existing and new investors. Unknown to existing investors, the source of a
11 substantial part of the interest that NILSEN and ERRICO caused CFI and CFMF to pay to them
12 came from new investors' funds rather than from borrowers.

13 21. It was a part of the scheme to defraud that, among other conduct, NILSEN and
14 ERRICO:

15 (A) represented to investors that information disclosed to investors about, among
16 other things, the balances of the loans into which they placed the investors' money, the amount of
17 the senior encumbrances on those loans and the monthly debt obligations of the borrowers was
18 accurate, when in truth, NILSEN and ERRICO knew that such information was materially
19 understated;

20 (B) represented to investors that their money would be invested in loans secured
21 by deeds of trust, when in truth, NILSEN and ERRICO improperly diverted investor funds for
22 personal use;

23 (C) omitted to disclose to investors material, adverse information about the
24 financial condition of their loans, in violation of the duties of trust, loyalty, confidence and full
25 disclosure that NILSEN and ERRICO had, including, among other things, the borrowers' failure
26 to pay interest or pay off the loan, material extensions of loan maturity dates, material
27 advancements of funds and the transfer of property from the original borrower to NILSEN or

28 **INDICTMENT**

1 affiliated entities in connection with foreclosure or a deed in lieu of foreclosure;

2 (D) deceived investors by creating the misleading appearance through, among
3 other things, the Fractional Investment Documents, that CFI had transferred all of its interests in
4 promissory notes and deeds of trust to investors and assumed the role of their loan servicing
5 agent, when in truth, NILSEN and ERRICO continued to control the loans by failing to record
6 the investors' trust deed assignments, leaving NILSEN with the sole authority to exploit the loans
7 for his personal benefit;

8 (E) deceived investors by secretly continuing to exercise control over investors'
9 loans by, among other things, (i) subordinating (*i.e.*, relegating to a lower priority position) those
10 loans in favor of loans NILSEN or ACCUSTOM obtained from a third party, and (ii) selling an
11 investor loan to a third party in return for funds that NILSEN and ERRICO diverted to purposes
12 other than repaying the investors' principal;

13 (F) deceived investors by continuing to send to them, by mail and electronic
14 transfer, regular interest payments and account statements, which lulled investors into a false
15 sense of security by creating the appearance that the borrowers were performing their loan
16 obligations, when in truth, as NILSEN and ERRICO knew, most loans were non-performing, the
17 borrowers did not pay interest and the source of a material amount of the interest payments was
18 money from other investors which NILSEN and ERRICO added to the loan balance under the
19 guise of an "interest reserve";

20 (G) misrepresented to CFMF investors that their money would be used to make or
21 invest in loans secured by deeds of trust, when in truth, as NILSEN and ERRICO knew, a
22 material amount of money disbursed by the Fund for loans was not so secured;

23 (H) misrepresented to CFMF investors that the Fund would not loan money to the
24 Manager (CFI) or its affiliates such as NILSEN or ACCUSTOM, when in truth, as NILSEN and
25 ERRICO knew, the Fund loaned multiple millions of dollars to the Manager and its affiliates;

26 (I) misrepresented to CFMF investors that the Manager would instruct borrowers
27 to send loan payments directly to CFMF or to a CFI trust account maintained on the Fund's

28 **INDICTMENT**

1 behalf, when in truth, as NILSEN and ERRICO knew, they did not so instruct borrowers but paid
2 interest from the fictitious "interest reserves"; most borrowers did not pay any interest, and
3 NILSEN and ERRICO financed continuing interest obligations using new investor money;

4 (J) misrepresented to CFMF investors that the Fund's investments would be held
5 in loan documents made in the Fund's name, when in truth, as NILSEN and ERRICO knew, the
6 promissory notes and deeds of trust in which NILSEN and ERRICO placed CFMF's money did
7 not reflect the Fund as lender, nor did the Fund receive assignments reflecting its investments;

8 (K) represented to CFMF investors that the Manager was a fiduciary to the Fund's
9 investors, was required to exercise good faith and integrity with respect to the Fund's affairs, and
10 was prohibited from using CFMF's funds in any manner "except for the exclusive benefit" of
11 CFMF, when in truth, as NILSEN and ERRICO knew, the Manager, through its president and
12 sole shareholder, NILSEN, and its loan servicing manager ERRICO, repeatedly breached its
13 duties to investors;

14 (L) concealed their misconduct by providing false information to outside auditors
15 who audited CFMF's financial statements and reviewed trust accounts in connection with state
16 regulatory requirements of the Department of Corporations and Department of Real Estate;

17 (M) concealed their misconduct by belatedly recording many of the assignments
18 of deeds of trust that NILSEN and ERRICO had previously issued to investors, but had not
19 recorded, and by executing quitclaim deeds to investors on certain properties;

20 (N) held investor meetings at which, among other things, NILSEN lulled investors
21 by making materially false statements, omitting to disclose material information and making
22 statements that were materially misleading and deceptive; and

23 (O) defrauded investors of multiple millions of dollars used for personal financial
24 benefit by, among other things, charging loan origination fees, extension fees, modification fees,
25 late fees, management fees, servicing fees, paying themselves commissions and consulting fees,
26 using investor funds for loans to themselves on which they rarely paid interest, converting
27 borrowers' properties into the name of NILSEN or ACCUSTOM, and otherwise

28 **INDICTMENT**

1 misappropriating investor funds for personal use.

2 22. By May 2008, as a result of their fraudulent scheme, NILSEN and ERRICO had
3 created a loan portfolio of more than 150 loans in which they had placed over \$150 million of
4 investor money. Over 1,000 people had invested in CFI, CFMF or both.

5 23. By June 2008, CFI and CFMF were in bankruptcy proceedings. The precise
6 amount of the loss to investors caused by the scheme depends upon the value of the properties
7 that served as the security for the loans and the amount of equity, if any, left in those properties,
8 but will exceed \$100 million.

9

10 COUNT ONE: 18 U.S.C. § 1349 (Conspiracy to Commit Mail and Wire Fraud)

11 24. Paragraphs 1 through 23 are realleged as if fully set forth herein.

12 25. From in or about 2004 through in or about 2008, in the Northern District of
13 California and elsewhere, the defendants,

14 DAVID ARTHUR NILSEN, and
MANOEL ANTONIO ERRICO,

15 and others known and unknown to the Grand Jury, did conspire and agree together and with each
16 other to commit offenses against the United States, to wit, (a) mail fraud, in violation of Title 18,
17 United States Code, Section 1349, and Title 18, United States Code, Section 1341, and (b) wire
18 fraud, in violation of Title 18, United States Code, Section 1349, and Title 18, United States
19 Code, Section 1343.

20 Objects of the Conspiracy

21 26. Mail Fraud: it was a part and object of the conspiracy that DAVID ARTHUR
22 NILSEN and MANOEL ANTONIO ERRICO, having devised and intending to devise a scheme
23 and artifice to defraud, and for obtaining money and property by means of false and fraudulent
24 pretenses, representations, and promises, and to sell, dispose of, loan, exchange, alter, give away,
25 distribute, supply, and furnish and procure for unlawful use any counterfeit or spurious coin,
26 obligation, security, or other article, or anything represented to be or intimated or held out to be
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28 **INDICTMENT**

such counterfeit or spurious article, for the purpose of executing such scheme and artifice and attempting so to do, placed in the post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and deposited and caused to be deposited matters and things to be sent and delivered by private or commercial interstate carrier, and took and received therefrom, such matters and things, and knowingly caused to be delivered by mail and such carrier according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, such matters and things, in violation of Title 18, United States Code, Section 1341; and

9 27. Wire Fraud: it was further a part and object of the conspiracy that DAVID
10 ARTHUR NILSEN and MANOEL ANTONIO ERRICO, having devised and intending to devise
11 a scheme and artifice to defraud, and for obtaining money and property by means of false or
12 fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by
13 means of wire, radio, and television communication in interstate or foreign commerce, writings,
14 signs, signals, pictures, and sounds for the purpose of executing such scheme or artifice, in
15 violation of Title 18, United States Code, Section 1343.

The Means and Methods of the Conspiracy

17 28. Among the means and methods by which NILSEN and ERRICO carried out the
18 conspiracy to defraud investors were the following:

19 (A) mailing and otherwise delivering to investors the Fractional Investment
20 Documents, Offering Circular and other documents which contained materially false
21 information;

22 (B) transmitting, and causing to be transmitted, wire transfers diverting investor
23 funds for personal use;

24 (C) executing documents, in breach of the duties of trust, loyalty, confidence and
25 full disclosure that NILSEN and ERRICO had, to extend loan maturity dates, fund
26 advancements, effect property transfers from borrowers to NILSEN and ACCUSTOM,
27 subordinate investor loans and assign investor loans to third parties, all without prior knowledge

INDICTMENT

1 or consent of investors;

2 (D) executing deceptive and misleading trust deed assignments, promissory note
3 endorsements and Loan Servicing Agreements, which created the appearance that CFI had
4 transferred all of its interests in promissory notes and deeds of trust to investors and assumed the
5 role of their loan servicing agent;

6 (E) mailing and electronically transferring to investors deceptive and misleading
7 interest payments and account statements, which created the appearance that their investments
8 were performing and their principal was safe;

9 (F) transferring CFMF money into loans without securing the Fund's interest in
10 the loans through deeds of trust in its name or the receipt of assignments of same;

11 (G) loaning funds to the Fund's Manager and its affiliates in violation of the
12 Offering Circular;

13 (H) paying interest to CFMF and CFI investors from purported "interest reserves,"
14 which were funded in material part by new investor money;

15 (I) providing false financial information to auditors;

16 (J) belatedly recording assignments of deeds of trust and executing quitclaim
17 deeds to investors on certain properties;

18 (K) making, at investor meetings, materially false statements, omitting to disclose
19 material information and making statements that were materially misleading and deceptive; and

20 (L) paying themselves multiple millions of dollars through various forms of
21 compensation.

22 Overt Acts of the Conspiracy

23 29. In furtherance of the conspiracy and to effect the illegal object thereof, NILSEN
24 and ERRICO committed and caused others to commit the following overt acts, among others, in
25 the Northern District of California and elsewhere:

26 (A) In or about December 2004, mailed an interest payment and account
27 statement to Investor A for loan numbers 4532 and 4649;

28 **INDICTMENT**

(B) In or about December 2004, mailed an interest payment and account statement to Investor B for loan number 4649;

(C) In or about September 20, 2005, caused an interstate wire transfer of \$1,500,000 to be made from CFMF Funding / Subscription Account -8146;

(D) In or about November 15, 2005, caused an interstate wire transfer of \$250,000 to be made from CFMF Funding / Subscription Account -8146;

(E) In or about December 2005, mailed an interest payment and account statement to Investor C for loan numbers 4951 and 5078;

(F) In or about December 2005, mailed an interest payment and account statement to Investor D for loan number 5078;

(G) In or about December 2005, transferred an interest payment for loan number 4971 to Investor E's CFMF account and mailed to Investor E an account statement;

(H) In or about December 2005, mailed an interest payment and account statement to Investor H for loan number 45362;

(I) In or about June 2006, mailed an interest payment and account statement to Investor D for loan number 5078;

(J) In or about December 2006, transferred an interest payment and mailed an account statement to Investor D for loan numbers 5078, 5352;

(K) In or about December 2006, executed a Subordination Agreement in connection with loan number 5364;

(L) In or about February 7, 2007, caused an interstate wire transfer of \$51,241.95 to be made from Escrow Trust Account -5146;

(M) In or about May 15, 2007, caused an interstate wire transfer of \$100,000 to be made from Escrow Trust Account -6023;

(N) In or about June 2007, mailed an interest payment and account statement to Investor B for loan numbers 4632 and 4649;

(O) In or about June 2007, transferred an interest payment and mailed an

INDICTMENT

1 account statement to Investor D for loan numbers 5078, 5352;

2 (P) In or about July 9, 2007, caused an interstate wire transfer of \$209,100 to
3 be made from Escrow Trust Account -6023;

4 (Q) In or about October 2007, executed an assignment of the deed of trust to a
5 third party for loan number 5436;

6 (R) In or about November 19, 2007, caused an interstate wire transfer of
7 \$28,490 to be made from Escrow Trust Account -6023;

8 (S) In or about November 19, 2007, caused an interstate wire transfer of
9 \$28,190 to be made from Escrow Trust Account -6023;

10 (T) In or about November 19, 2007, caused an interstate wire transfer of
11 \$27,690 to be made from Escrow Trust Account -6023.

12 (U) In or about December 2007, mailed an interest payment and account
13 statement to Investor A for loan numbers 4532, 4649, 4971, 5364 and 5365;

14 (V) In or about December 2007, transferred an interest payment and mailed an
15 account statement to Investor D for loan numbers 5078, 5352;

16 (W) In or about December 2007, transferred an interest payment for loan
17 number 4971 to Investor E's CFMF account and mailed to Investor E an account statement;

18 (X) In or about January 2008, mailed investment documents to Investor B for
19 loan number 5578;

20 (Y) In or about January 2008, transferred an interest payment and mailed an
21 account statement to Investor C for loan numbers 4951, 5078 and 5436;

22 (Z) In or about January 2008, transferred an interest payment and mailed an
23 account statement to Investor D for loan numbers 5078, 5352;

24 (AA) In or about January 2008, mailed an interest payment and account
25 statement to Investor H for loan number 45362;

26 (BB) In or about February 2008, transferred an interest payment and mailed an
27 account statement to Investor B for loan numbers 4632, 4649, 5436, 5578;

28 **INDICTMENT**

(CC) In or about February 2008, transferred an interest payment and mailed an account statement to Investor D for loan numbers 5078, 5352;

(DD) In or about March 2008, transferred an interest payment and mailed an account statement to Investor B for loan numbers 4632, 4649, 5436, 5578; and

(EE) In or about March 2008, transferred an interest payment and mailed an account statement to Investor D for loan numbers 5078, 5352, 5436.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH TWELVE: 18 U.S.C. § 1341 (Mail Fraud)

10 30. Paragraphs 1 through 23 and 28 through 29 are realleged as if fully set forth
11 herein.

12 31. On or about the dates set forth below, in the Northern District of California and
13 elsewhere, the defendants,

14 DAVID ARTHUR NILSEN, and
MANOEL ANTONIO ERRICO,

and others known and unknown to the Grand Jury, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and to sell, dispose of, loan, exchange, alter, give away, distribute, supply, and furnish and procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme and artifice and attempting so to do, placed in the post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and deposited and caused to be deposited matters and things to be sent and delivered by private or commercial interstate carrier, and took and received therefrom, such matters and things, and knowingly caused to be delivered by mail and such carrier according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, such matters and things, in violation of Title 18, United States Code, Section 1341, to wit:

INDICTMENT

Count	Approximate Mailing Date	Description	Investor	Loan #s
Two	January 2008	investor packet	B	5578
Three	February 2008	interest payment transfer and mailed statement	B	4632, 4649, 5436, 5578
Four	March 2008	interest payment transfer and mailed statement	B	4632, 4649, 5436, 5578
Five	December 2005	interest payment and statement	D	5078
Six	June 2006	interest payment and statement	D	5078
Seven	December 2006	interest payment transfer and mailed statement	D	5078, 5352
Eight	June 2007	interest payment transfer and mailed statement	D	5078, 5352
Nine	December 2007	interest payment transfer and mailed statement	D	5078, 5352
Ten	January 2008	interest payment transfer and mailed statement	D	5078, 5352
Eleven	February 2008	interest payment transfer and mailed statement	D	5078, 5352
Twelve	March 2008	interest payment transfer and mailed statement	D	5078, 5352, 5436

COUNTS THIRTEEN THROUGH TWENTY: 18 U.S.C. § 1343 (Wire Fraud)

32. Paragraphs 1 through 23 and 28 through 29 are realleged as if fully set forth herein.

33. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendants,

DAVID ARTHUR NILSEN, and
MANOEL ANTONIO ERRICO,

and others known and unknown to the Grand Jury, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false or

INDICTMENT

1 fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by
 2 means of wire, radio, and television communication in interstate or foreign commerce, writings,
 3 signs, signals, pictures, and sounds for the purpose of executing such scheme or artifice, in
 4 violation of Title 18, United States Code, Section 1343, to wit:

Count	Wire Date	Amount	Description
Thirteen	September 20, 2005	\$1,500,000	interstate wire transfer from CFMF Funding / Subscription Account -8146 for an investment in Arizona real estate
Fourteen	November 15, 2005	\$250,000	interstate wire transfer from CFMF Funding / Subscription Account -8146 for the benefit of a family member
Fifteen	February 9, 2007	\$51,241.95	interstate wire transfer from Escrow Trust Account -5146 for an Arizona residence
Sixteen	May 15, 2007	\$100,000	interstate wire transfer from Escrow Trust Account -6023 for a deposit on property in Puerto Vallarta, Mexico
Seventeen	July 9, 2007	\$209,100	interstate and foreign wire transfer from Escrow Trust Account -6023 for a deposit on property in Puerto Vallarta, Mexico
Eighteen	November 19, 2007	\$28,490	interstate and foreign wire transfer from Escrow Trust Account -6023 for a deposit on property in Puerto Vallarta, Mexico
Nineteen	November 19, 2007	\$28,190	interstate and foreign wire transfer from Escrow Trust Account -6023 for a deposit on property in Puerto Vallarta, Mexico
Twenty	November 19, 2007	\$27,690	interstate and foreign wire transfer from Escrow Trust Account -6023 for a deposit on property in Puerto Vallarta, Mexico

21 COUNTS TWENTY-ONE THROUGH THIRTY-ONE: 15 U.S.C. §§ 78j(b) and 78ff;

22 17 C.F.R. §§ 240.10b-5 and 240.10b5-2; 18 U.S.C. § 2 (Securities Fraud)

23 34. Paragraphs 1 through 23 and 28 through 29 are realleged as if fully set forth
 herein.

25 35. On or about the dates set forth below, in the Northern District of California and
 elsewhere, the defendants,

27 DAVID ARTHUR NILSEN, and

28 **INDICTMENT**

1 MANOEL ANTONIO ERRICO,
 2 willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of
 3 interstate commerce, the mails and the facilities of national securities exchanges, in connection
 4 with the purchase and sale of securities, did use and employ manipulative and deceptive devices
 5 and contrivances, and aided and abetted others in using and employing manipulative and
 6 deceptive devices and contrivances, in contravention of Title 15, United States Code, Sections
 7 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2,
 8 and Title 18, United States Code, Section 2, by (a) employing devices, schemes and artifices to
 9 defraud; (b) making untrue statements of material facts and omitting to state material facts
 10 necessary in order to make the statements made, in the light of the circumstances under which
 11 they were made, not misleading; and (c) engaging in acts, practices and courses of business
 12 which operated and would operate as a fraud and deceit upon persons, to wit, used and caused
 13 others to use the mails in the manner, and on or about the dates, set forth below:

Count	Approximate Mailing Date	Description
Twenty-One	August 2005	\$7,720 CFMF investment by Investor E
Twenty-Two	August 2005	\$106,000 CFMF investment by Investor H
Twenty-Three	October 2005	\$7,000 CFMF investment by Investor E
Twenty-Four	April 2007	\$13,700 CFMF investment by Investor E
Twenty-Five	August 2007	account statement for \$95,000 CFMF investment by Investor F
Twenty-Six	August 2007	\$17,000 CFMF investment by Investor F
Twenty-Seven	October 2007	\$20,000 CFMF investment by Investor B
Twenty-Eight	October 2007	account statement for \$225,000 CFMF investment by Investor G

28 **INDICTMENT**

1 2 3 4 5	Twenty-Nine Thirty Thirty-One	December 2007 December 2007 March 2008	\$1,685 CFMF investment by Investor B \$130,000 CFMF investment by Investor F \$10,000 CFMF investment by Investor F
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6 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17,
 7 Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and Title 18, United States
 8 Code, Section 2.

9 **FORFEITURE ALLEGATION**

10 18 U.S.C. §981(a)(1)(C) and 28 U.S.C. §2461(c) (Forfeiture)

11 36. Paragraphs 1 through 35 are realleged as if fully set forth herein.

12 37. Upon a conviction of any of the offenses alleged in Counts One through Thirty-
 13 One, the defendants,

14 DAVID ARTHUR NILSEN, and
 15 MANOEL ANTONIO ERRICO,

16 shall forfeit to the United States all property, constituting and derived from proceeds traceable to
 17 violations of Title 18, United States Code, Section 1341 (Mail Fraud), Title 18, United States
 18 Code, Section 1343 (Wire Fraud), Title 15, United States Code, Sections 78j(b) and 78ff; Title
 19 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and Title 18, United
 20 States Code, Sections 2 and 1349, as alleged in Counts One through Thirty-One of this
 21 Indictment.

22 38. If any of the forfeitable property, as a result of any act or omission of NILSEN or
 23 ERRICO:

- 24 (A) cannot be located upon the exercise of due diligence;
- 25 (B) has been transferred or sold to, or deposited with, a third party;
- 26 (C) has been placed beyond the jurisdiction of the Court;
- 27 (D) has been substantially diminished in value; or
- 28 (E) has been commingled with other property which cannot be divided without

INDICTMENT

1 difficulty;

2 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to
3 seek forfeiture of any other property of said defendants up to the value of the forfeitable property
4 described above.

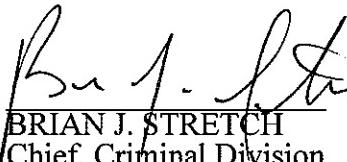
5
6 All in violation of Title 18, United States Code, Section 1341 (Mail Fraud), Title 18,
7 United States Code, Section 1343 (Wire Fraud), Title 15, United States Code, Section 78j(b) and
8 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; Title 18, United
9 States Code, Sections 2, 1349 and 981(a)(1)(C); Title 21, United States Code, Section 853(p);
10 and Title 28, United States Code, Section 2461(c).

11
12 DATED: September 8, 2009

13 A TRUE BILL

14 
15 FOREPERSON

16 JOSEPH P. RUSSONIELLO
17 United States Attorney

18 
19 BRIAN J. STRETCH
20 Chief, Criminal Division

21
22 Approved as to form:

23 
24 THOMAS E. STEVENS
25 Assistant United States Attorney

26
27
28 INDICTMENT

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

VIOLATION: COUNT 1: 18 U.S.C. § 1349 (Conspiracy);
 COUNTS 2-12: 18 U.S.C. § 1341 (Mail Fraud);
 COUNTS 13-20: 18 U.S.C. § 1343 (Wire Fraud);
 COUNTS 21-31: 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. §§ 240.10b-5 and 240.10b-2 (Securities Fraud); 18 U.S.C. § 2 (Aiding and Abetting)

- Petty
 Minor
 Misdemeanor
 Felony

PENALTY:

SEE ATTACHMENT

BY **SEAL**
CLERK OF COURT

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION SEP - 8 2009

DEFENDANT - U.S.

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 DAVID ARTHUR NILSEN and MANOEL ANTONIO TORREIRO
 SAN JOSE, CALIFORNIA

DISTRICT COURT NUMBER

CR 09 0895 JW

DEFENDANT**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

- 1) If not detained give date any prior summons was served on above charges → **PVT**
 2) Is a Fugitive
 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
 5) On another conviction } Federal State
 6) Awaiting trial on other charges
 If answer to (6) is "Yes", show name of institution

Has detainer Yes
 been filed? No

} If "Yes"
 give date
 filed _____

DATE OF
 ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
 TO U.S. CUSTODY

Month/Day/Year

 This report amends AO 257 previously submitted

Name and Office of Person
 Furnishing Information on this form JOSEPH P. RUSSONIELLO

U.S. Attorney Other U.S. Agency

Name of Assistant U.S.
 Attorney (if assigned)

THOMAS STEVENS

ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**

SUMMONS NO PROCESS* WARRANT

Bail Amount: NO BAIL

If Summons, complete following:

Arraignment Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Date/Time: _____ Before Judge: _____

Comments:

ATTACHMENT

Count One: 18 U.S.C. § 1349 (Conspiracy)

Maximum Penalties: Twenty (20) years imprisonment; fine \$250,000 or twice the amount of gain or loss, whichever is greater; supervised release three (3) years; special assessment \$100.

Counts Two through Twelve: 18 U.S.C. § 1341 (Mail Fraud)

Maximum Penalties: Twenty (20) years imprisonment; fine \$250,000 or twice the amount of gain or loss, whichever is greater; supervised release three (3) years; special assessment \$100.

Counts Thirteen through Twenty: 18 U.S.C. § 1343 (Wire Fraud)

Maximum Penalties: Twenty (20) years imprisonment; fine \$250,000 or twice the amount of gain or loss, whichever is greater; supervised release three (3) years; special assessment \$100.

Counts Twenty-One through Thirty-One: 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. §§ 240.10b-5 and 240.10b5-2 (Securities Fraud), 18 U.S.C. § 2 (Aiding and Abetting)

Maximum Penalties: Twenty (20) years imprisonment; fine \$5,000,000 or twice the amount of gain or loss, whichever is greater; supervised release three (3) years; special assessment \$100.

**Counts One through Thirty-One include a Forfeiture Allegation
18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c) (Forfeiture)**